

DISTRICT OF COLUMBIA
DOH Office of Adjudication and Hearings
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DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

LEE'S AUTO SERVICE and TONY LEE
Respondents

Case No.: I-00-20031
I-00-20042

FINAL ORDER

I. Introduction

On February 28, 2000, the Government served a Notice of Infraction (No. 00-20031) charging Respondents with violating 20 DCMR 4003.4, which requires generators of hazardous wastes to respond to a written request for information from the Department of Health within fourteen days of receipt of such a request. The Notice of Infraction sought a fine of \$500.00. Respondents did not answer the Notice of Infraction within fifteen days of service. Accordingly, on March 29, 2000, this administrative court issued an order finding Respondents in default, assessing them a penalty of \$500.00 pursuant to D.C. Code § 6-2704(a)(2)(A), and requiring the Government to serve a second Notice of Infraction as required by D.C. Code § 6-2712(f).

On April 18, 2000, the Government served the second Notice of Infraction (No. 00-20042). Respondents also did not answer that Notice within fifteen days of service. Accordingly, on June 9, 2000, this administrative court issued a Final Notice of Default, finding Respondents in default on the second Notice of Infraction and assessing a total penalty of

\$1,000.00 pursuant to D.C. Code §§6-2704(a)(2)(A) and 6-2704(a)(2)(B). The Final Notice of Default also set July 5, 2000 as the date for an *ex parte* proof hearing, and afforded Respondents an opportunity to appear at the hearing to contest liability, fines, penalties or fees. Enclosed with the Final Notice of Default were copies of both the first and the second Notice of Infraction.

Prior to the July 5, 2000, hearing, the Government submitted three exhibits in support of the Notices of Infraction (Exhibits DOH-1, -2 and -3), which were admitted and are part of the record. The inspector who issued the notices also appeared for hearing and testified. Respondents did not appear at the hearing, nor did they submit any evidence.

II. Findings of Fact

Based upon the testimony of the inspector, which I find to be credible, the exhibits submitted by the Government and the entire record in this case, I make the following findings:

1. Respondents are generators of hazardous waste.
2. Respondents received a request for information concerning hazardous waste from the Government. The request was dated September 13, 1999 and Respondents received it on September 22, 1999.
3. Respondents did not respond to the request for information.
4. The Notices of Infraction in this matter were served on Respondents on February 28, 2000 and April 18, 2000, as evidenced by the certificate of service signed by the Government's representative.

5. This administrative court's March 29, 2000 default order was served on Respondents by certified mail. Respondents received that order on March 31, 2000, as evidenced by the return receipt that is part of the record.
6. This administrative court's Final Notice of Default, along with copies of both Notices of Infraction, was served on Respondents by certified mail on June 9, 2000. Respondents received that mailing on June 20, 2000, as evidenced by the return receipt that is part of the record.
7. Respondents have offered no explanation for their failure to answer the Notices of Infraction.

III. Conclusions of Law

1. Respondents had adequate notice of the charges against them as mandated both by the Due Process Clause and by the applicable statute. Service of the Notices of Infraction by mail to Respondents' last known address is sufficient notice. *Mennonite Board of Missions v. Adams*, 462 U.S. 791, 800 (1983); *McCaskill v. District of Columbia Dep't of Employment Servs.*, 572 A.2d 443, 445 (D.C. 1990); *Carroll v. District of Columbia Dep't of Employment Servs.*, 487 A.2d 622, 624 (D.C. 1985). In addition, Respondents received actual notice of the charges, as evidenced by the certified mail receipts for this administrative court's orders of March 29, 2000, and June 9, 2000.
2. By failing to respond to the Government's request for information, Respondents violated 20 DCMR 4003.4, and are liable for a civil fine of \$500.00.

3. Respondents failed to answer both the first and the second Notice of Infraction without demonstrating sufficient cause for those failures, and therefore are liable for statutory penalties of \$1,000.00 in addition to the civil fine prescribed for their violation. D.C. Code §§6-2704(a)(2)(A) and 6-2704(a)(2)(B).

IV. Order

Based upon the findings of fact, the conclusions of law and the entire record in this case, it is hereby, this _____ day of _____, 2000:

ORDERED, that Respondents are jointly and severally liable for the specified fines and penalties assessed in this matter. Respondents shall cause to be remitted a single payment totaling **ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500.00)** in accordance with the attached instructions within twenty (20) calendar days of the date of mailing of this Order (fifteen (15) calendar days plus five (5) days for service by mail pursuant to D.C. Code § 6-2715). A failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondents' license or permit pursuant to D.C. Code § 6-2713(f).

/s/ **7-13-00**

John P. Dean
Administrative Judge